

**From:** [Gaffney, Michael J. \(CIV\)](#)  
**To:** [Ethan Szumanski](#)  
**Cc:** [Ryan Walters](#); [mmiller@texaspolicy.com](mailto:mmiller@texaspolicy.com); [ncurtisi@texaspolicy.com](mailto:ncurtisi@texaspolicy.com); [cweldon@texaspolicy.com](mailto:cweldon@texaspolicy.com); [ncurtisi@texaspolicy.com](mailto:ncurtisi@texaspolicy.com); [rhenneke@texaspolicy.com](mailto:rhenneke@texaspolicy.com); [Bailey, Clayton L. \(CIV\)](#)  
**Subject:** RE: 5:23-cv-34 - Texas v. Garland - Declarations  
**Date:** Tuesday, November 7, 2023 10:37:54 AM  
**Attachments:** [image001.png](#)

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All,

As we move closer to the November 28 trial date, I wanted to loop back on a few topics we've discussed previously.

First, in our initial conversations after the court's Rule 65(a)(2) notice, we discussed a possible agreement between the parties that we would not object to the admissibility of the exchanged declarations on the ground that they themselves constitute hearsay. I said that we would be open to reaching an agreement on that as our offices have done in other cases, but that I thought we should wait to exchange the declarations before discussing further. Now that we've done that, Defendants would be willing to agree that we will not object to the admissibility of the parties' declarations on the basis that they constitute hearsay. Is Texas still interested in reaching an agreement on that front?

Second, we've also discussed whether each side intends to put on live witnesses. We remain interested in discussing that more general point and would be happy to do that before next week's deadlines. But, for now, we would be willing to agree that the parties do not need sponsoring witnesses to introduce any documents (including declarations) at the November 28 trial, which is how we would envision the bulk of the evidence coming in. Does Texas agree with that as well?

If easier to discuss by phone, we can get on a call later today.

Finally, you'll see that I've copied Clayton Bailey, who is a trial attorney in our office who has joined this matter. He will be entering his NOA shortly.

Best,

Mike

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**From:** Gaffney, Michael J. (CIV)  
**Sent:** Wednesday, November 1, 2023 6:44 PM  
**To:** Ethan Szumanski <[Ethan.Szumanski@oag.texas.gov](mailto:Ethan.Szumanski@oag.texas.gov)>  
**Cc:** Ryan Walters <[Ryan.Walters@oag.texas.gov](mailto:Ryan.Walters@oag.texas.gov)>; [mmiller@texaspolicy.com](mailto:mmiller@texaspolicy.com); [ncurtisi@texaspolicy.com](mailto:ncurtisi@texaspolicy.com); [cweldon@texaspolicy.com](mailto:cweldon@texaspolicy.com); [ncurtisi@texaspolicy.com](mailto:ncurtisi@texaspolicy.com); [rhenneke@texaspolicy.com](mailto:rhenneke@texaspolicy.com)  
**Subject:** 5:23-cv-34 - Texas v. Garland - Declarations

All,

I have received your email but have not attempted to access the declarations yet. I'll separately confirm that I can access them shortly. Before I open them, I wanted to transmit the five declarations attached here. Please note that we've marked the fourth one

**EXHIBIT**

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confidential and included a footnote (on the last page) explaining the basis for providing the information contained in that declaration.

Hope you all are well.

Best,

Mike

**Michael Gaffney**

Trial Attorney

Federal Programs Branch, Civil Division

U.S. Department of Justice

202-514-2356

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**From:** Ethan Szumanski <[Ethan.Szumanski@oag.texas.gov](mailto:Ethan.Szumanski@oag.texas.gov)>

**Sent:** Wednesday, November 1, 2023 6:01 PM

**To:** Gaffney, Michael J. (CIV) <[Michael.J.Gaffney@usdoj.gov](mailto:Michael.J.Gaffney@usdoj.gov)>

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[rhenneke@texaspolicy.com](mailto:rhenneke@texaspolicy.com)

**Subject:** [EXTERNAL] 5:23-cv-34 - Texas v. Garland, et al. - Texas's Declarations

Counsel,

Pursuant to the November 1 declaration deadline ordered by the Court, *see* ECF No. 75, Texas hereby provides the declarations it anticipates using for the upcoming bench trial. Please confirm that you have received and are able to access the attached declarations.

Best,



**Ethan Szumanski**

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